

***United States Court of Appeals
for the Second Circuit***



**BRIEF FOR
APPELLEE**

Affidavit

77-6191

To be argued by
GAINES GWATHMEY, III

United States Court of Appeals FOR THE SECOND CIRCUIT

Docket No. 77-6191

UNITED STATES OF AMERICA,
Petitioner-Appellee,

—v.—

MORGAN GUARANTY TRUST COMPANY,
Respondent,

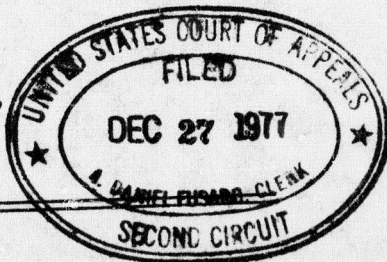
ROGER L. KEECH and SANDRA J. KEECH,
Intervenors-Appellants.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

BRIEF FOR APPELLEE

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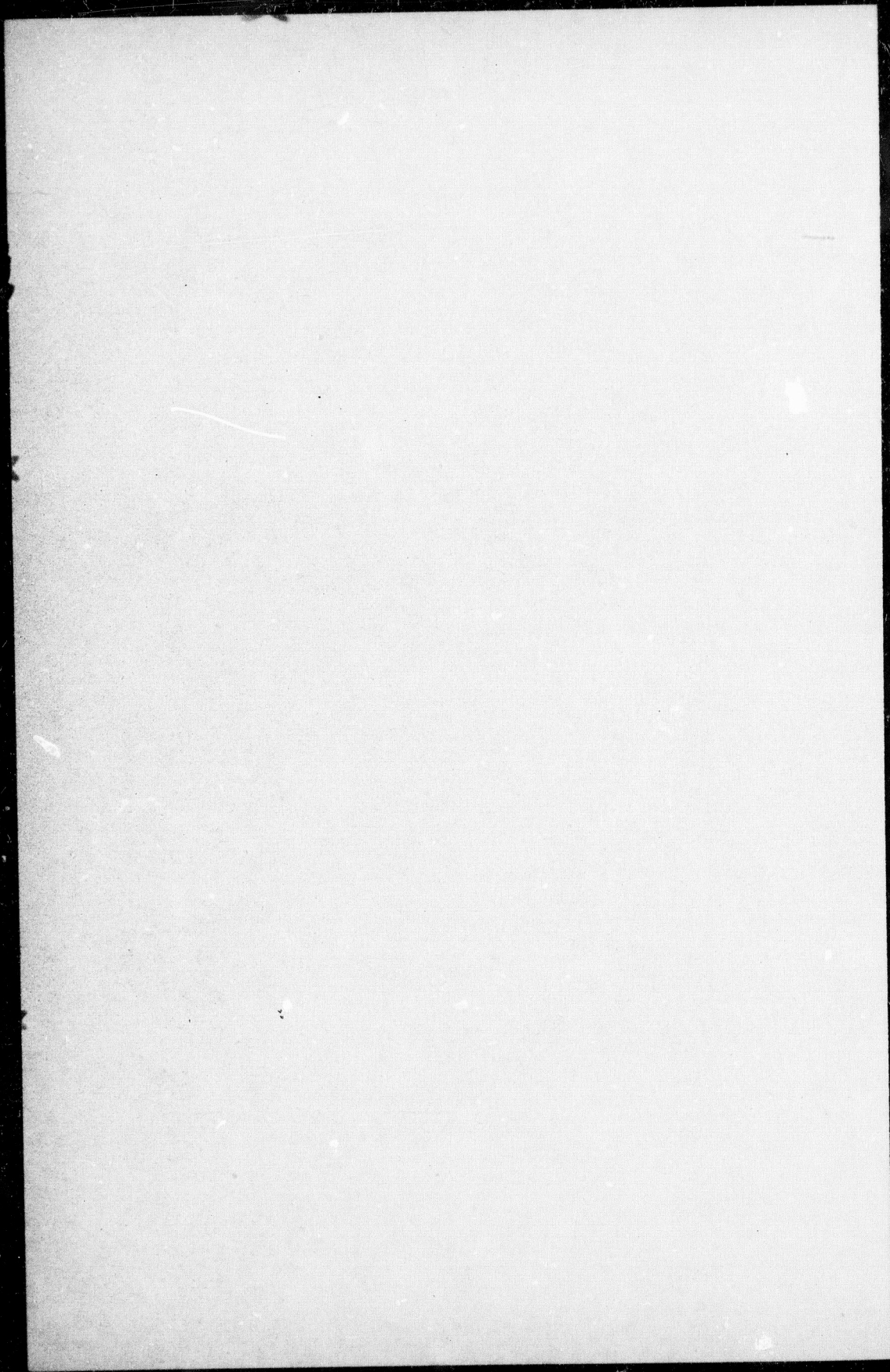


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—v.—

MORGAN GUARANTY TRUST COMPANY,
Respondent,

ROGER L. KEECH and SANDRA J. KEECH,
Intervenors-Appellants.

BRIEF FOR APPELLEE

Issue Presented on Appeal

Did the District Court abuse its discretion in denying intervenors Roger L. and Sandra J. Keech's application for an evidentiary hearing and pre-hearing discovery prior to granting the Government's petition to enforce an Internal Revenue Service administrative summons for records of a third party relating to intervenors?

Statement of the Case

This is an appeal by intervenors * Roger L. Keech and Sandra J. Keech (the "taxpayers") from an order of the

* The taxpayers have, pursuant to the Tax Reform Act of 1976, a statutory right to intervene in proceedings to enforce IRS summonses against third-party record-keepers such as respondent Morgan Guaranty. See 26 U.S.C.A. § 7609.

Honorable Robert L. Carter, United States District Judge, Southern District of New York, dated November 18, 1977 granting the Government's application for enforcement of an Internal Revenue Service ("IRS") summons issued to and served upon respondent Morgan Guaranty Trust Company ("Morgan Guaranty" or the "Bank") and denying the taxpayers' application for an evidentiary hearing and pre-hearing discovery (3a-4a).*

The Government initiated this proceeding on October 6, 1977 by the filing of a petition and supporting affidavit seeking judicial enforcement of an administrative summons served upon Morgan Guaranty by IRS on June 17, 1977 pursuant to Section 7602 of the Internal Revenue Code, 26 U.S.C. § 7602 (7a-17a). On the same day, the court signed an order to show cause scheduling a hearing on why the summons should not be enforced for October 25, 1977 (*id.*). The order to show cause and petition were duly served upon the Bank on 7, 1977.

Prior to the adjourned return date of the order to show cause, the taxpayers intervened in the action in opposition to the Government's petition and requested an evidentiary hearing on their contention that "the summons was not issued by the Internal Revenue Service in good faith, in that the said summons was issued solely in aid of a criminal investigation of taxpayers." (19a). The taxpayers also requested "pre-hearing" discovery (20a).

On November 17, 1977, the Government submitted additional affidavits to the District Court further detailing the circumstances of the issuance of the summons and the investigation of which it was a part (25a-31a).

* References in the form "—a" are to the correspondingly designated pages of the joint appendix.

On November 18, 1977, following oral argument by counsel for the Government and for the taxpayers, the District Court denied taxpayers' request for a hearing and pre-hearing discovery and granted the petition to enforce the summons (35a-36a). The court concluded that the taxpayers had failed to establish a sufficient basis to require any evidentiary hearing. (See 36a).

The Bank has taken no appeal from the District Court's order enforcing the summons.

Statement of Facts

The affidavits submitted by the Government demonstrate that the summons challenged in this proceeding was issued as part of a joint investigation being conducted by the Audit and Intelligence Divisions of IRS to determine the extent, if any, of the taxpayers' civil liability for additional taxes and/or for civil fraud penalties * for the years 1973, 1974, and 1975, and to determine whether grounds exist for the IRS to seek criminal prosecution of Roger Keech under the revenue laws (25a-31a).

As the special agent from the Intelligence Division assigned to the joint investigation, Alexander Dombroski has responsibility (vis-a-vis the revenue agent) for the determination of whether to recommend a criminal prosecution to his superiors. As the revenue agent from the Audit Division, Charles Larzarus's responsible for assisting special agent Dombroski in the determination of the taxpayers' correct tax liability for the years under

* Under 26 U.S.C. § 6653(b), if an underpayment of tax is due to fraud, a penalty is imposed equal to 50% of the underpayment. To the extent that special agent Dombroski's investigation develops information relevant to the issue of whether an underpayment is intentional it will plainly be of use to any effort by IRS to recover a 50% penalty.

investigation (26a, 30a-31a). Of course, any determination of correct liability as distinct from the liability the taxpayers originally reported will be critical to a determination of a willful underreporting of income, see 26 U.S.C. §§ 7201 *et seq.*

Special agent Dombroski issued the summons on June 17, 1977 and caused it to be served on the Bank the same day.* The summons directed the Bank to appear before Dombroski on July 5, 1977 to testify and produce the following records, books and other papers:

"Signature card, ledger sheets or transcripts of accounts for any and all savings, or checking accounts and Certificates of Deposits in the names of Roger L. and/or Sandra J. Keech covering the period 1972 through 1975. Also any records, to include application and record of repayments relating to loans, mortgages and letters of credit." (15a-16a).

The records sought by the summons are not in the possession of the IRS and may well be relevant to the matters under investigation (30a).

At the time of the issuance of the summons, the joint investigation had not disclosed sufficient information for a determination of the extent of additional taxes, if any, owed by the taxpayers for years in question. Neither had it produced sufficient information to permit a decision by special agent Dombroski on the question of whether or not to recommend criminal prosecution (26a, 31a). Accordingly, no decision on either of these issues had been made, and the IRS file contains no document which could be construed as a final disposition by IRS thereon (*id.*).

* Pursuant to 26 U.S.C.A. § 7609(a)(1), notice of the issuance of the summons was given to the taxpayers by mail on the same day (13a).

By letter dated June 28, 1977 taxpayers by their then attorney Stephen E. Lampf instructed the Bank not to comply with the summons (17a). The Bank has honored that instruction to date.

The "facts" proffered by taxpayers are not inconsistent in any material respect with those summarized above. Taxpayers assert that the summons was one of eleven issued by a special agent from IRS's Intelligence Division, that the special agent in question purportedly stated that he was conducting a "criminal" investigation of Roger Keech,* and that the summons covered two years, 1972 and 1974, with respect to which the taxpayer had previously been audited and those audits completed (19a).

With respect to taxpayers' third "factual" assertion, the Government does not seek in this proceeding to discover records relating to the 1972 tax year (8a). Moreover, as to 1974, the IRS, pursuant to statutory authority, 26 U.S.C. § 7605(b), advised the taxpayers that the IRS found it necessary to re-examine their books to determine whether any change in their 1974 taxes was warranted (28a).

* Dombroski denies having made any such statement (26a-27a). However, the Government does not dispute that Dombroski was conducting an investigation which was in part "criminal". The point is that it was, and is, an investigation directed at both potential civil and criminal causes of action against the taxpayers (See *infra* at 10-16).

ARGUMENT

The District Court's decision denying taxpayers' application should be affirmed because taxpayers' affidavits do not state facts which, if proved, would demonstrate that the summons was improperly issued.

Taxpayers contend that the evidence which they have submitted below establishes *prima facie* that special agent Dombroski issued the summons "solely in aid of a criminal investigation" and that, accordingly, the District Court's denial of their request for a hearing prior to granting the enforcement petition was in error. Taxpayers' contention is squarely foreclosed by the decision of the Supreme Court in the landmark case of *Donaldson v. United States*, 400 U.S. 517 (1971).

To obtain judicial enforcement of an IRS summons issued pursuant to 26 U.S.C. § 7602 the Government must

"show that the investigation will be conducted pursuant to a legitimate purpose, that the inquiry may be relevant to the purpose, that the information sought is not already within the Commissioner's possession and that the administrative steps required by the Code have been followed." *United States v. Powell*, 379 U.S. 48, 59 (1964).

Given such a showing, the burden shifts to the taxpayer to show that an abuse of the Court's process would result from enforcement of the summons. *Donaldson v. United States*, 400 U.S. 517, 527 (1971); *United States v. Powell* 379 U.S. 48, 59 (1964); *United States v. Davey*, 543 F.2d 996, 1000 (2d Cr. 1976).

Taxpayers do not contend that the Government failed to make the requisite showing under *United States v.*

Powell, supra. However, in an attempt to meet their burden of demonstrating an abuse of the Court process in enforcement of the summons, taxpayers allege that the summons was issued "solely in aid of a criminal investigation" and proffer three "factual bases" for this assertion: allegations that the summons was one of eleven issued by a special agent from the IRS Intelligence Division; allegations that the special agent stated that he was conducting a criminal investigation of Roger Keech; and allegations that for two of the four years about which the summons sought information (1972 and 1974), the taxpayers' returns had previously been audited and those audits completed (see 19a).*

Relying upon *Donaldson v. United States, supra*, the District Court ruled that the evidence proffered by taxpayers was insufficient to warrant a hearing on their assertion that the summons was issued solely in aid of a criminal investigation and ordered enforcement of the summons (35a-37a).

In *Donaldson*, an IRS summons had been issued to a third party by a special agent in aid of a fraud investigation being conducted exclusively by the Intelligence Division. The Court noted that prior cases had uniformly held that the use of a summons which could lead to "civil

* As the Government has previously stated, it does not seek enforcement of the summons for the 1972 tax year. Accordingly, taxpayers' references to that year are irrelevant. Taxpayers appear to contend that the Government may not seek to enforce the petition for only 1973, 1974 and 1975, citing *Couch v. United States*, 409 U.S. 322, 329 n.9 (1972). That case stated that a record-keeper could not create an attorney-client privilege by giving the records in question to the taxpayer's attorney after receipt of the summons. Accordingly, it has nothing whatsoever to do with the proposition for which taxpayers here cite it as support.

liability as well as criminal prosecution" is proper, and stated that

"Congress clearly has authorized the use of the summons in investigating what may prove to be criminal conduct." 400 U.S. at 532, 535.

The Court held that

"an internal revenue summons may be issued in aid of an investigation if it is issued in good faith and prior to a recommendation for criminal prosecution." 400 U.S. at 536.

The Court expressly rejected the argument that the participation of a special agent in the investigation in any way restricted IRS's right to gather information by administrative summons, stating

"To draw a line where a special agent appears would require the Service, in a situation of suspected but undetermined fraud, to forgo either the use of the summons or the potentiality of an ultimate recommendation for prosecution. We refuse to draw that line and thus to stultify enforcement of federal law." 400 U.S. at 535-36.

The Supreme Court's *Donaldson* decision affirmed *sub nomine* a decision of the Fifth Circuit Court of Appeals, *United States v. Mercurio*, 418 F.2d 1213 (5th Cir. 1969). The latter opinion indicates that the taxpayer there had sought to intervene by alleging in a conclusory fashion that IRS special agents were "guilty of bad faith" because their function was to develop information concerning criminal violations. 418 F.2d at 1216. The Fifth Circuit observed that the taxpayer had not alleged that a recommendation for prosecution has been made and affirmed the District Court's decision to deny tax-

payer's motion to intervene, *without the necessity of a hearing*. 418 F.2d at 1218.*

It is undisputed here that no recommendation for criminal prosecution has been made by the IRS to the Department of Justice, or for that matter, by the special agent involved to his superiors. Accordingly, since there is no material factual distinction between *Donaldson* and the case at bar, it is respectfully submitted that the District Court's order should be affirmed.**

* Two decisions of the District Court for the Southern District of New York, one affirmed by this Court, also ordered enforcement of IRS summonses without any hearings where the taxpayers conclusorily alleged that the respective summonses were issued in bad faith. See *United States v. Manufacturers & Traders Bank*, Index No. M8-85 (CMM) Opinion No. 4386 at 3 (S.D.N.Y. Nov. 22, 1976), *aff'd mem.*, Dkt. No. '76-6188 (2d Cir., Jan. 31, 1977); *United States v. Werner*, Index No. M-18-304 (IBC), (S.D.N.Y. Nov. 18, 1977) (notice of appeal filed). In *Manufacturers & Traders Bank*, the summons was issued prior to the effective date of the Tax Reform Act of 1976, which simply grants a taxpayer the right to intervene in a third party summons enforcement action. See 26 U.S.C. § 7609. Contrary to taxpayers' contention, the legislative history of Section 7609 makes clear that the section's passage by Congress was not intended to change existing substantive law concerning enforcement of IRS summonses. S. Rep. No. 94-938 94th Cong. 2nd Sess. (1976), *reprinted in* [1976] U.S. Code Cong. & Ad. News 3439, 3800.

** In *Garrett v. United States*, 511 F.2d 1037 (9th Cir. 1975), the Court affirmed a denial of intervention requested by taxpayers in a proceeding to enforce a summons against a third party record-keeper, stating:

"several of the grounds of intervention raised by taxpayers' proposed answer are identical to those found insufficient to warrant intervention in *Donaldson*, and are likewise insufficient here. The addition of conclusory allegations carefully tailored to the language of *Donaldson*, that a recommendation for prosecution has, or should have, been made, and that the government already possesses the evidence sought by the summons does not alter the result." 511 F.2d at 1038.

In relying on *Donaldson*, the Government recognizes that there is a conflict among a number of the courts of appeals other than the Second Circuit as to the meaning of *Donaldson's* holding that a summons must be issued "in good faith and prior to a recommendation for criminal prosecution." Indeed, the Supreme Court presently has before it this issue. See *United States v. La Salle National Bank*, 554 F.2d 302 (7th Cir. 1977) cert. granted, 46 U.S.L.W. 3384 (No. 77-364, 1977 Term Dec. 13, 1977). The Government's position as to the proper meaning of *Donaldson* is set out immediately below; however, as the following analysis demonstrates, regardless of how *Donaldson* is interpreted, the summons in this case was properly enforced without an evidentiary hearing.

Properly read, *Donaldson* establishes that to determine whether a tax investigation involving the Intelligence Division has reached the stage where issuance of an IRS summons is improper, the test is whether criminal prosecution has been recommended by IRS to the Department of Justice. See *United States v. Billingsley*, 469 F.2d 1208, 1209-10 (10th Cir. 1972); *United States v. Troupe*, 438 F.2d 117, 119 (8th Cir. 1971); *United States v. Manufacturers & Traders Bank*, *supra*. *Donaldson's* good faith requirement should not be viewed as further modifying this test; instead, it should be read to embrace considerations distinct from the criminal investigation issue—specifically, whether the summons was issued for non-tax purposes, such as harassment.

A number of courts of appeals outside this Circuit, however, have read *Donaldson's* good faith requirement to permit broad inroads on the IRS's authority to issue a summons in Intelligence Division investigations, concluding that a summons may be unenforceable where the "sole purpose" or "fin purpose" of its issuance is in aid of a criminal prosecution, regardless of whether a "recommendation" has occurred. *E.g. United States v. La*

Salle National Bank, supra; *United States v. Friedman*, 532 F.2d 928 (3d Cir. 1976); *United States v. Zack*, 521 F.2d 1366 (9th Cir. 1975); *United States v. Wall Corp.*, 475 F.2d 893 (D.C. Cir. 1972); *Compare United States v. Hodge and Zweig*, 548 F.2d 1347, 1351 (9th Cir. 1977).*

For the most part, these opinions rest upon the supposition that where the summons is issued after a special agent had decided to recommend criminal prosecution or after a determination as to civil liability has been finally made, it is issued solely in aid of the criminal aspect of the investigation. Decisions based upon this supposition, however, are not easily harmonized with *Donaldson v. United States, supra*, since the latter case establishes that no meaningful line can be drawn between the civil and criminal purposes of an investigation prior to IRS recommendation for prosecution. As the Tenth Circuit Court of Appeals has observed in *United States v. Billingsley, supra*:

In the instant case, as in all other tax fraud investigations, the potential for civil tax liability necessarily accompanied the potential for criminal prosecution. While a criminal investigation remains solely within the Internal Revenue Service the civil aspects are inextricably associated with the criminal. It is not until the Service refers a case to the Department of Justice, however, that two distinct agencies are involved, and the civil

* The Third Circuit and Court of Appeals for the District of Columbia describe the test as whether the agent has "already formed a firm purpose to recommend prosecution." *United States v. Friedman, supra*, 532 F.2d at 932; *United States v. Wall Corp., supra*, 475 F.2d at 895.

and criminal aspects at least begin to disentangle.
(citations omitted) 469 F.2d at 1209-10.*

In *United States v. La Salle National Bank*, *supra*, the Supreme Court has granted certiorari to determine whether an

"Internal Revenue Summons [may] properly be issued to obtain third-party records in aid of ad-

* This view reflects an awareness of IRS's responsibility accomplished through the Audit and Intelligence Divisions in the various districts to determine and assess civil tax liability and to investigate civil and criminal violations of the tax law. While the Audit Division's program emphasizes the civil aspects of enforcement, it includes "participation with special agents [of the Intelligence Division] in the conduct of fraud investigations." Internal Revenue Service Organization and Functions, § 1113. 563, 39 Fed. Reg. 11572, 11581. The Intelligence Division (§ 1118.6) "enforces the criminal statutes applicable to income * * * [and other] tax laws * * * by developing information concerning alleged criminal violations thereof * * *." 39 Fed. Reg. 11607.

In addition, the Assistant Regional Commissioner in charge of the Intelligence Division is directed to provide further coordination between the Intelligence and Audit Divisions by developing (§ 1114.8) "regional programs, standards and other measures necessary to implement most effectively the intelligence program of the Service which includes the investigation of alleged tax fraud, certain other civil and alleged criminal violations of tax laws * * *, and such other special investigations as the Commissioner may direct." 39 Fed. Reg. 11601. For a delineation of the respective responsibilities of agents from the Intelligence and Audit Divisions in joint investigations, *see* Internal Revenue Manual §§ 4565.31 (11-16-76), 4565.32 (11-16-76), 9324.1 (2-22-77) and 9324.2 (2-22-77).

In 1976, the Intelligence Division commenced 8,797 full-scale tax fraud investigations. Only 2,037, or approximately one-quarter, of these resulted in recommendations for prosecution. The 6,760 cases not recommended to the Department of Justice involved approximately \$11 million in deficiencies and penalties. *See* 1976 Annual Report of the Commissioner of Internal Revenue, pp. 33, 61, 152. The 1969 statistics considered by the Court in *Donaldson* are comparable (*see* 400 U.S. at 535 n.17).

ministrative investigation conducted by IRS to determine whether it should recommend to Justice Department that taxpayer be prosecuted for criminal tax violations." 46 U.S.L.W. 3226 (Oct. 4, 1977).

Resolution of *La Salle* favorably to the Government would, of course, dispose of taxpayers' present appeal. However, a decision adverse to the Government would not aid taxpayers here because uncontroverted affidavits submitted by the IRS agents involved establish that the instant summons was issued to develop information needed to resolve both the civil and criminal aspects of the investigation.

The evidence proffered by taxpayers to rebut the Government's affidavits is irrelevant to the question of whether the summons was issued solely in aid of a criminal prosecution. The claim is made by taxpayers that the summons is one of eleven issued by a special agent during the course of the investigation; however, the number of summonses issued during an investigation has no bearing on the issue at hand.

It is asserted that the IRS seeks information for years which have previously been audited (1972 and 1974) and that, therefore, the summons serves only a criminal purpose; however, with respect to this contention, IRS only seeks information relating to 1974 and as to this year, IRS has advised taxpayers of its need, pursuant to 26 U.S.C. § 7605, to re-examine the taxpayer's records to redetermine taxpayers' civil tax liability. The Government is, in fact, now trying to determine whether the taxpayers under-reported their income for that year willfully or otherwise. Under such circumstances, we submit that taxpayers' assertion that enforcement of the summons

would be an abuse of the Court's process is frivolous.* If taxpayers' position were correct, then anytime a taxpayer successfully concealed unreported income throughout an audit, the IRS would thereafter be barred from using an administrative summons to determine whether additional taxes are due. This cannot be the law.

Taxpayers assert that the fact that the summons was issued by a special agent suggests bad faith on the part of the IRS. However, *Donaldson v. United States*, *supra*, demonstrates that the participation of a special agent in an investigation is not sufficient to warrant a hearing on the issue of IRS's alleged absence of good faith since the civil aspects of the case remain inextricably intertwined with the criminal. See *United States v. Billingsley*, *supra*, 469 F.2d at 1209-10; see also footnote, *supra* at p. 12.

Finally, taxpayers assert that special agent Dombroski has stated that he was conducting a "criminal" investigation of the taxpayers and that this statement constitutes an admission of improper purpose sufficient to warrant a hearing. Taxpayers rely upon *United States v. McCarthy*, 514 F.2d 368 (3rd Cir. 1975), in support of this contention. In *McCarthy*, the summons was issued not to a third party but to that taxpayer himself who challenged it on several grounds including allegations that the Secretary had failed to notify the taxpayer of the necessity of re-examining the records involved, that the special agent involved had been harassing persons related to the defendant corporation, and that the summons was issued solely in aid of a criminal investigation. 514 F.2d at 371.

* The obvious meaning of the references in the opinions relied upon by taxpayers with respect to civil liability as having been "already determined" (e.g. *United States v. Wall Corp.*, 475 893, 895 (D.C. Cir. 1972) is that if IRS agents have already determined the extent of a taxpayer's underreporting of income in the current investigation, then no civil purpose could be served by a summons.

Taxpayers read *United States v. McCarthy* as standing for the proposition that the allegation that a special agent has stated that he is conducting a "criminal" investigation is sufficient to require a hearing on the issue of whether the summons was issued in bad faith as "solely" in aid of a criminal prosecution. If taxpayers' interpretation of *United States v. McCarthy* is correct, the Government submits that the decision should not be followed. It is clear from *Donaldson v. United States, supra*, that the participation of a special agent is not a sufficient ground to challenge a summons enforcement. It is also clear that a special agent is always conducting a "criminal" investigation to the extent that he or she is analyzing whether to recommend criminal prosecution (*Id.*, 400 U.S. at 534-35). We do not understand how a statement by the special agent to that effect can be construed to constitute evidence that there is no civil purpose which is being pursued simultaneously in the investigation (*see* footnote at p. 12 *ante*). Moreover, a special agent participating in a joint investigation is *required* by his internal regulations to give a taxpayer who is the subject of the examination the following warnings before speaking to him or her:

"As a special agent, one of my functions is to investigate the possibility of criminal violations of the Internal Revenue laws and related offenses . . ."

"In connection with my investigation of your tax liability (or other matters), I would like to ask you some questions. However, first I advise you that under the Fifth Amendment to the Constitution of the United States, I cannot compel you to answer any questions or to submit any information if such answers or information might tend to incriminate you in any way. I also advise you that anything which you say and any documents which you submit may be used against you in any

criminal proceeding which may be undertaken. I advise you further that you may, if you wish, seek the assistance of an attorney before responding." IRS Manual, Handbook for Special Agents § 242.132 (3-1-77).

Donaldson v. United States, *supra* recognized that special agents investigate the possibility of criminal violations of the revenue laws, 400 U.S. at 534-36, and nevertheless enforced the summons there at issue because of the self-evident fact that fraud investigations may ultimately serve civil as well as criminal purposes.

Here, taxpayers' "facts" proffered in support of their opposition to enforcement of the summons amount to no more than the conclusory unsupported allegation that the IRS issued the summons in "bad faith", "solely in aid of a criminal investigation". In this Circuit, the recitation of such incantations is insufficient to raise any issue requiring an evidentiary hearing prior to enforcement of the summons. *Donaldson v. United States*, *supra*; *United States v. Manufacturers & Traders Bank*, *supra*; *United States v. Werner*, *supra*. See also *Garrett v. United States*, *supra*, 511 F.2d 1037. Since no factual allegations have been made by taxpayers which, if proved, would demonstrate the absence of a civil purpose, the Government submits that the decision of the District Court should be affirmed.

CONCLUSION

The order of the District Court enforcing the summons should be affirmed in all respects.

Dated: New York, New York
December 27, 1977

Respectfully submitted,

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Of Counsel.*



AFFIDAVIT OF MAILING

State of New York) ss
County of New York)

Marian J. Bryant being duly sworn,
deposes and says that s he is employed in the Office of the
United States Attorney for the Southern District of New York.

That on the
two copies
27th day of December 19 77 she served ~~two copies~~ of the
within Brief of Appellee

by placing the same in a properly postpaid franked envelope addressed:

Bender & Frankel, Esquires
225 Broadway
New York, New York 10007

And deponent further says s he sealed the said envelope and placed the same in the mail chute drop for mailing in the United States Courthouse Annex, One St. Andrews Plaza, Borough of Manhattan, City of New York.

Sworn to before me this

Marion J. Bryant

27th day of December, 1977

Ralph Lee
RALPH I. LEE
New York State of New York
New York County, New York

RALPH I. LEE
 Notary Public, State of New York
 No. 41-2292838 Queens County
 Term Expires March 20, 1979